

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B.Cr. Revision No. 357/2000
(Smt. Pappu Devi Vs. Laxman Singh)

Date of order : 07/07/2006

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Haider Aga for the petitioner.

None present for the non-petitioner though served.

BY THE COURT :-

This revision petition is directed against the order dated 27.5.2000 passed by Judge, Family Court, Jodhpur (for short 'the Family court' hereinafter) in Criminal Original Case No. 100/95 whereby the family court partly allowed the application filed by the petitioner, her son and daughter and granted a monthly allowance for the maintenance at the rate of Rs. 500/- per month each in favour of Dhiraj and Kumari Pammi both minor son and daughter of the petitioner and non-petitioner. However, the family court dismissed the application filed by the petitioner seeking monthly allowance for the maintenance. Aggrieved by the order impugned to the extent dismissing the application filed by the petitioner seeking monthly allowance for the maintenance, the petitioner has filed the instant revision

petition.

I have heard learned counsel for the petitioner. Perused the order impugned and carefully gone through the statement of witnesses recorded by the family court as also the material available on record.

It is contended by the learned counsel for the petitioner that the petitioner has established the case by evidence that the non-petitioner failed to maintain the petitioner and neglected her. The petitioner has also established the income of the non-petitioner. Learned counsel further contends that the non-petitioner used to harass the petitioner, for which a criminal case was registered against the non-petitioner. The petitioner has filed a petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'Hindu Marriage Act' hereinafter) before the family court being Civil Original Case No. 249/99. By judgment and order dated 20.10.2003, the application filed by the petitioner seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act was allowed and accordingly the decree was passed. Despite the decree of the restitution of conjugal rights of the family court, the non-petitioner has neglected the petitioner. The non-petitioner has also filed a petition under Section 13 of the Hindu Marriage Act seeking dissolution of marriage which came to be dismissed by the family

court by order dated 18.5.2001.

Despite repeated calls, no one appears for the non-petitioner though personally served.

The family court declined to grant monthly allowance for the maintenance in favour of the petitioner wife on the ground that an agreement Ex.A-2 dated 20.3.1993 was executed between the father of the petitioner and the non-petitioner, wherein while settling the matter, it was mentioned that earlier the petitioner at her own went to her parent's house and started living there.

I have carefully gone through the agreement Ex.A-2. It appears that the agreement Ex.A-2 is written between father of the petitioner and the non-petitioner, though in one of the para, it was stated that the petitioner is also bound by the agreement as she has affixed the thumb impression thereon. It appears from whole of the agreement that the parties were having disputes and ultimately disputes were resolved by that agreement and the petitioner started living with the non-petitioner, not only the petitioner, but son and daughter born from the lion of the non-petitioner are already living with the petitioner. The petitioner herself appeared as witness and stated

that out of the wedlock, four issues were born. The younger girl expired and three issues are surviving. Out of the three issues, one son and daughter are with the petitioner and elder daughter Vimla is with the non-petitioner. It is alleged that the non-petitioner used to assault the petitioner. Apart from the non-petitioner, the other relatives of the non-petitioner also used to assault the petitioner and ultimately the petitioner was turned out of the matrimonial home. She stated that non-petitioner has his own truck and is earning Rs. 10,000/- per month. She expressed her desire to live with the non-petitioner. In support of her case, the petitioner produced Durga Singh as witness. Witness Durga Singh also made a similar statement. The non-petitioner himself appeared as witness and produced mother Suadevi and two neighbours namely Ranjeet Singh and Mandanlal. The non-petitioner admitted that the petitioner is his legally wedded wife as also admitted about the issues born out of the wedlock. However, he stated that the petitioner lodged a false case against him. He also admitted to be a truck driver. He has produced his salary certificate Ex.A-1 and Compromise Ex.A-2. However, denied the allegation that he used to give beating to his wife petitioner and stated that the petitioner herself is undertaking the work of labourer. Similar is the statement of Suadevi, mother of the non-petitioner. She stated that the petitioner voluntarily abandoned the non-

petitioner and started living with her parent's house without permission and informing her husband. She also stated that the petitioner used to level allegation of illicit relation of her husband with one Anchi. Witness Ranveer Singh stated that the petitioner used to quarrel with her husband. She poured kerosene on herself in order to ruin the reputation of her husband and threatened to lodge her husband, mother-in-law and sister-in-law in jail. He stated that the non-petitioner is earning Rs. 2500/- per month as driver. Similar is the statement of Madanlal.

From the statement of witnesses noticed above, it appears that both the parties are levelling allegations against each other. It has been established from the evidence that on certain occasions when the non-petitioner gave beatings to the petitioner, she left the matrimonial home and on that account it cannot be said that the petitioner abandoned her husband without any reasonable and probable cause. The petitioner is residing at her parent's house with one son and daughter. It has also been established that the non-petitioner is having a truck and by operating the truck, he has a reasonable income though the non-petitioner claims himself to be a driver. Be that as it may, even assuming that the non-petitioner is a driver, the income of the non-petitioner cannot be said to be the income

what has been disclosed by him. The driver's salary is much more than Rs.2500/- per month as stated by the non-petitioner and his witnesses.

Learned court below has based its finding mainly on the agreement which appears to have been executed between the father of the petitioner and the non-petitioner. Even according to the agreement, the matter was settled and the petitioner started living with her husband. They could not reconcile the matrimonial life and husband again turned out the petitioner, which shows that the non-petitioner has failed to maintain the petitioner and therefore, apart from the children entitled for the maintenance, the petitioner is also entitled for the maintenance. Keeping in view all the facts and circumstances of the case, in my view, a sum of Rs. 500/- per month would be just and proper maintenance for the petitioner.

In view of the aforesaid discussion, the revision petition is allowed. The order impugned to the extent declining to grant maintenance to the petitioner is set aside and it is directed that the petitioner wife is entitled for maintenance at the rate of Rs. 500/- per month from the non-petitioner from the date of order of this Court.

(H.R.PANWAR),J.

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